

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

GRANT CONNECT, LLC, et al.,

Defendants.

2:09-CV-01349-PMP-RJJ

PRELIMINARY INJUNCTION ORDER
AS TO DEFENDANTS MICHAEL L.
HENRIKSEN JR., TASHA JN PAUL,
KYLE KIMOTO, AND JOHNNIE
SMITH

Presently before the Court is Plaintiff Federal Trade Commission's ("FTC") Emergency Motion for a Temporary Restraining Order and Preliminary Injunction as to Additional Individual Defendants (Doc. #143) with supporting exhibits (Doc. #144, #145), filed on May 14, 2010. Defendant Johnnie Smith ("Smith") filed an Opposition (Doc. #152) on May 27, 2010. Defendant Michael L. Henriksen ("M. Henriksen") filed an Opposition (Doc. #154) on May 27, 2010. Defendant Kyle Kimoto ("K. Kimoto") did not file a response to the motion, instead filing his own motion for summary judgment and/or to dismiss (Doc. #155). Defendant Tasha Jn Paul ("Jn Paul") did not file a response, but she sent a letter to the FTC (Doc. #158, Decl. of Roberto Anguizola, Ex. 1), which the parties have treated as her response. Plaintiff FTC filed a Reply (Doc. #158) on June 7, 2010. The Court held a hearing on this matter on June 15, 2010. (Mins. of Proceedings (Doc. #164).)

FINDINGS OF FACT

The FTC filed this action on July 27, 2009, alleging Defendants Grant Connect, LLC; Global Gold, Inc.; Horizon Holdings, LLC; O'Connell Gray, LLC; Pink LP; Vantex Group, LLC; Vertek Group, LLC; Rachael A. Cook; James J. Gray; Steven R. Henriksen;

1 Juliette M. Kimoto; and Randy D. O'Connell (collectively "Original Defendants")
2 deceptively marketed grant and credit line offers, failed to adequately disclose negative
3 upsells and related monthly charges, and debited consumers' bank accounts on a recurring
4 basis without obtaining written authorization. (Compl. (Doc. #1).) The FTC alleged the
5 Original Defendants engaged in a common enterprise while engaging in these acts, and thus
6 are jointly and severally liable. The FTC brings claims against Defendants for
7 misrepresentation (count one); failure to disclose (count two); and unauthorized debiting of
8 consumers' bank accounts (count three). The FTC seeks injunctive relief, including
9 appointment of a receiver and asset freezes, and equitable relief to redress consumer injury,
10 including restitution and disgorgement.

11 On July 28, 2009, the Court granted a Temporary Restraining Order ("TRO")
12 (Doc. #18) against the Original Defendants. The TRO included prohibitions on certain
13 conduct, froze Original Defendants' assets, and appointed Robb Evans as temporary
14 receiver. On August 14, 2009, the FTC and Defendants Grant Connect, LLC; Horizon
15 Holdings, LLC; O'Connell Gray, LLC; James J. Gray; and Randy D. O'Connell stipulated
16 to the entry of a preliminary injunction (Doc. #44), which the Court granted on August 18,
17 2009 (Doc. #48). On September 22, 2009, the Court converted the TRO to a preliminary
18 injunction (Doc. #83) as to Defendants Global Gold, Inc.; Pink LP; Vantex Group, LLC;
19 Vertek Group, LLC, Rachael A. Cook; Steven R. Henriksen; and Juliette M. Kimoto. This
20 Order hereby incorporates the findings of fact and conclusions of law set forth in the prior
21 preliminary injunction order.

22 In April 2010, the FTC amended the Complaint to add factual allegations
23 regarding other allegedly fraudulent internet website offers, including offers related to work
24 from home and the acai berry. The Amended Complaint (Doc. #112) added four new
25 individual Defendants: M. Henriksen, Jn Paul, K. Kimoto, and Smith (collectively
26 "Additional Individual Defendants"). The Amended Complaint also added fifteen new

1 corporate Defendants: Acai, Inc.; AllClear Communications, Inc.; Consolidated Merchant
2 Solutions, LLC; Dragon Group, Inc.; Elite Benefits, Inc.; Global Fulfillment Inc.; Global
3 Gold Limited; Healthy Allure, Inc.; Juliette M. Kimoto Asset Protection Trust; MSC
4 Online, Inc.; OS Marketing Group, LLC; Paid to Process, Inc.; Premier Plus Member, Inc.;
5 Total Health, Inc.; and Vcomm, Inc.

6 It appears to the satisfaction of the Court, having considered the evidence
7 presented by the parties, including the Amended Complaint, the Motions for Preliminary
8 Injunction filed by Plaintiff, the declarations, exhibits, and memoranda of points and
9 authorities filed in support thereof and in response thereto, that:

10 1. This Court has jurisdiction over the subject matter of this case, and there is
11 good cause to believe it will have jurisdiction over all parties hereto and that
12 venue in this district is proper;

13 2. There is good cause to believe that Additional Individual Defendants have
14 engaged in and are likely to engage in acts and practices that violate Section 5(a)
15 of the Federal Trade Commission Act, 15 U.S.C. § 45(a), Section 907(a) of the
16 Electronic Funds Transfer Act, 15 U.S.C. §§ 1693e(a) (“EFTA”); and Section
17 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b) (“Regulation E”), and the
18 Commission is therefore likely to prevail on the merits of this action. A practice
19 is deceptive under the Federal Trade Commission Act “if it is likely to mislead
20 consumers acting reasonably under the circumstances . . . in a way that is
21 material.” F.T.C. v. Cyberspace.Com LLC, 453 F.3d 1196, 1199 (9th Cir. 2006).

22 “A solicitation may be likely to mislead by virtue of the net impression it creates
23 even though the solicitation also contains truthful disclosures.” Id. at 1200.

24 While proof that consumers actually were deceived is not required, such evidence
25 is “highly probative to show that a practice is likely to mislead consumers acting
26 reasonably under the circumstances.” Id. at 1201.

1 a. As set forth in the Court's prior preliminary injunction order (Doc.
2 #83), the FTC is likely to prevail in showing the various offers were false
3 or misleading.

4 b. The FTC is likely to prevail in demonstrating the Additional Individual
5 Defendants are liable under the Act. An individual may be liable for
6 injunctive relief under the Act for a corporation's deceptive practices "if
7 the FTC can prove (1) that the corporation committed misrepresentations
8 or omissions of a kind usually relied on by a reasonably prudent person,
9 resulting in consumer injury, and (2) that [the individual] participated
10 directly in the acts or practices or had authority to control them." F.T.C. v.
11 Publ'g Clearing House, Inc., 104 F.3d 1168, 1170-71 (9th Cir. 1997). An
12 individual is personally liable for a corporation's violations of the Act if
13 (1) "he participated directly in the acts or practices or had authority to
14 control them," and (2) "had actual knowledge of material
15 misrepresentations, was recklessly indifferent to the truth or falsity of a
16 misrepresentation, or had an awareness of a high probability of fraud
17 along with an intentional avoidance of the truth." Cyberspace.Com LLC,
18 453 F.3d at 1202.

19 i. The FTC is likely to prevail in demonstrating Defendant Smith
20 participated directly in the acts and practices of Vantex. Vantex
21 organization charts put Smith at the top of the chart and list him as
22 Executive Director. (Pl.'s Exs. 430, 517-19.) This is confirmed by
23 the declaration of Vantex owner Juliette Kimoto that while her
24 husband, K. Kimoto, was preparing for trial, Smith "was placed in
25 charge of the day-to-day business operations of Vantex." (Pl.'s
26 Reply (Doc. #158), Ex. 601.) J. Kimoto's statement is supported by

1 the testimony of Vantex employee Matthew Dacko (“Dacko”), who
2 indicated that Smith represented that Smith was in charge at
3 Vantex, and by Vantex employee Rachel McKinnon
4 (“McKinnon”), who testified that Smith was ranked higher than
5 Defendant Jn Paul, who is Vantex’s Operations Manager. (Pl.’s
6 Ex. 586 at 56, Ex. 587 at 170-71.) Moreover, Smith’s consulting
7 agreement suggests he was more than a consultant. (Smith Opp’n
8 (Doc. #152), Ex. 2.) The agreement gave Smith authority to
9 perform a broad range of activities, provided for approximately
10 \$200,000 in compensation, and provided for Smith eventually to
11 gain an ownership interest in Vantex. (Id.) Smith also agreed to a
12 two-year covenant not to compete. (Id.)

13 In addition to his title and place within Vantex’s hierarchy,
14 FTC has presented evidence that Smith was involved in Vantex’s
15 business practices. Smith did not live in Las Vegas, and visited the
16 Las Vegas office only sporadically. (Pl.’s Ex. 586 at 57, Ex. 587 at
17 23-24.) However, Smith was in daily contact with Jn Paul and
18 received by email summaries of various corporate activities. (Pl.’s
19 Exs. 417, 422, 587 at 170-71.) Testimony and email evidence
20 demonstrates Smith was involved in such business affairs as
21 deciding whether a new vendor would receive a new “skin,” or
22 offer; approving designs for new offers; recommending changes to
23 the terms and conditions of the Global Gold offer; attempting to
24 resolve a dispute between Jn Paul and an outside party regarding
25 the amount of the “bounty” the third party would receive; directing
26 Vantex employees as to the priority of certain offers; directing a

1 Vantex employee to develop a plan of action in conformity with his
2 directions; and implementing a new pay increase policy. (Pl.'s Exs.
3 436, 495, 587 at 165-66, Ex. 591, Ex. 600, Ex. 608.)

4 The FTC also is likely to prevail in showing Smith had
5 actual knowledge of the misrepresentations, or at least was
6 recklessly indifferent. Vantex employee McKinnon testified that
7 she advised another Vantex employee that she found a Vantex page
8 that was not in compliance with regulatory requirements because it
9 depicted President Obama and indicated the public could obtain
10 free stimulus money. (Pl.'s Ex. 587 at 74-76.) That employee
11 advised Jn Paul and Smith about the offending web page, but the
12 page was not taken down immediately. (Id.) Smith was aware of
13 actual complaints relating to the websites, as he was the recipient of
14 an email indicating a publisher had submitted a Global Gold offer
15 to his lawyer for review, and the lawyer indicated the offer lacked
16 proper disclosures. (Pl.'s Ex. 457.) Smith also was copied on an
17 email which indicated Global Gold had received a complaint from
18 the Iowa Attorney General. (Pl.'s Ex. 539.) Additionally, Smith
19 received an email detailing recent FTC cases, including cases in
20 which the FTC pursued companies who failed "to disclose monthly
21 recurring charges prior to purchase including negative option
22 charges. This cannot be done by clicking on a link to view the
23 terms and conditions." (Pl.'s Mot., Ex. 542.)

24 Further, Smith was included in email discussions regarding
25 the fact that for four months Global Gold was incurring a high rate
26 of customer chargebacks to their credit cards. (Pl.'s Exs. 536-37.)

1 Smith was involved in another email string in which M. Henriksen
2 questioned whether the refunds Vantex issued per cycle increased
3 due to customers “watching their bills” or was based on Vantex’s
4 new partial refund policy which was initiated to “solve the
5 chargeback issue.” (Pl.’s Ex. 592.) After the TRO was entered in
6 this case, Smith threw away a laptop because it contained
7 information he did not “want anyone trying to come here to use
8 against” him. (Smith Dep. (Doc. #162) at 99-100.)

9 Finally, Smith was a defendant in FTC v. Capital Choice
10 Consumer Credit, Inc. in relation to a shoppers club credit card
11 similar to the ones offered by Defendants in this case. (Pl.’s Ex.
12 598). The court in that case found Smith personally liable for the
13 telemarketing frauds committed in that case by various companies.
14 (Id. at 47-53.) Judgment was entered in that case in 2004. (Id.)
15 Moreover, Smith knew before he started working with Vantex that
16 K. Kimoto was under indictment for similar activity. (Smith Dep.
17 at 44-45.) Consequently, Smith should have been alert to the
18 possibility that similar claims in the Vantex/Global Gold offers
19 were misleading. Smith’s alleged reliance on an attorney’s opinion
20 letter on a single Global Gold offer does not insulate him from
21 individual liability. Cyberspace.Com LLC, 453 F.3d at 1202
22 (“[R]eliance on advice of counsel [is] not a valid defense on the
23 question of knowledge required for individual liability.”).

24 ii. The FTC is likely to prevail in demonstrating Defendant M.
25 Henriksen participated directly in the acts and practices of Vertek
26 and Vantex, and/or that he had the authority to control the acts and

1 practices of Vertek and Vantex employees. A Vantex organization
2 chart shows Henriksen as head of Vantex's accounting department.
3 (Pl.'s Ex. 517.) Juliette Kimoto avers that M. Henriksen was
4 "responsible for the financial operations of Vantex and Vertek."
5 (Pl.'s Ex. 601.) Although listed as head of accounting, Dacko
6 referred to M. Henriksen as the "boss," "pretty much the top guy,"
7 and "in charge." (Pl.'s Ex. 586 at 53-54, 56.) Other testimony
8 indicates M. Henriksen had significant control over non-accounting
9 issues. Specifically, Smith identified M. Henriksen as one of only a
10 few individuals who could terminate his employment with Vantex
11 and as one of the top individuals at the company. (Smith Dep. at
12 87, 137-38.) Dacko also testified that M. Henriksen resolved a
13 personnel issue within Vantex. (Pl.'s Ex. 586 at 79-83.) According
14 to Smith, M. Henriksen demoted Jn Paul. (Smith Dep. at 167-68.)
15 M. Henriksen also was involved in the decision to spin off Vantex
16 from Vertek, and was the person who announced the name change
17 to the employees. (Smith Dep. at 154-56; Pl.'s Ex. 586 at 68.)

18 In a May 2009 email, M. Henriksen lists "stuff [he] is
19 watching over," and directs Steve Henriksen, Smith, Rachael Cook,
20 and Josh Henriksen to "please read and pay attention to everything
21 with your name on it." (Pl.'s Ex. 558.) Henriksen proceeded to
22 give instructions regarding a variety of offers, including the grants
23 and acai berry. (Id.) M. Henriksen contends that each of these
24 matters related only to accounting, and thus the email does not
25 show he had authority over the content of the offers. Many of the
26 areas covered by the email involve accounting, but other topical

1 areas include deciding whether to do a bonus sale for acai, getting
2 articles of incorporation completed for two companies, drafting
3 agreements that “look like a legal document” for servicing
4 customers, and looking into the possibility of opening accounts in
5 Panama to avoid chargebacks. (Id.)

6 The FTC also is likely to prevail in showing M. Henriksen
7 had actual knowledge of the misrepresentations, or at least was
8 recklessly indifferent. M. Henriksen was aware of actual
9 complaints relating to the websites, as he was the recipient of an
10 email indicating a publisher had submitted a Global Gold offer to
11 his lawyer for review, and the lawyer indicated the offer lacked
12 proper disclosures. (Pl.’s Ex. 457.) M. Henriksen also was copied
13 on an email which indicated Global Gold had received a complaint
14 from the Iowa Attorney General. (Pl.’s Ex. 539.) Additionally, M.
15 Henriksen was a recipient of an email detailing recent FTC cases,
16 including cases where the FTC pursued companies who failed “to
17 disclose monthly recurring charges prior to purchase including
18 negative option charges. This cannot be done by clicking on a link
19 to view the terms and conditions.” (Pl.’s Ex. 542.) Finally, M.
20 Henriksen received an email by Steve Henriksen in which Steve
21 Henriksen stated, “This is pretty funny” (Pl.’s Ex. 529.)
22 Attached to the email is an internet website, wiki.answers.com,
23 which refers to First National Gold, a Global Gold credit line offer,
24 as fraudulent. (Pl.’s Exs. 529, 530.)

25 Further, M. Henriksen was included in email discussions
26 regarding the fact that for four months Global Gold was incurring a

1 high rate of customer chargebacks to their credit cards. (Pl.'s Exs.
2 536-37.) M. Henriksen questioned whether the refunds Vantex
3 issued per cycle increased due to customers "watching their bills"
4 or was based on Vantex's new partial refund policy which was
5 initiated to "solve the chargeback issue." (Pl.'s Ex. 592.)
6 Henriksen was aware of the hefty fines imposed by the Merchant
7 Chargeback Monitoring Program due to the large amount of
8 customer chargebacks. (Pl.'s Exs. 554-56.)

9 Finally, Henriksen is under a stipulated injunction with the
10 FTC in the Assail case restraining him from engaging in any
11 telemarketing, and further prohibiting him from making certain
12 representations related to credit card offers in connection with the
13 offer of goods or services "by any means whatsoever." (Pl.'s Ex.
14 597.) M. Henriksen thus should have been alert to the issue of
15 potential fraud in the various offers.

16 iii. The FTC is likely to prevail in demonstrating Defendant K.
17 Kimoto participated directly in the acts and practices of Vertek and
18 Vantex, and/or had the authority to control the acts and practices of
19 Vertek and Vantex employees. The evidence presented shows K.
20 Kimoto set up Vertek prior to his incarceration in relation to the
21 Assail matter. (Pl.'s Ex. 586 at 29-32.) Defendants O'Connell and
22 Gray aver that in late 2006 or early 2007, K. Kimoto contacted
23 them to assist Global Gold with the logistics of accepting
24 transactions over the internet. (Pl.'s Exs. 56-66.) O'Connell and
25 Gray began providing services to Global Gold thereafter. (Id.)
26 Afterwards, Kimoto "introduced" O'Connell and Gray to the grant

1 opportunity. (Id.) After further discussions with K. Kimoto,
2 O'Connell and Gray agreed to work on the grant project which
3 became Grant Connect. (Id.) In an email to a third party, Gray
4 described K. Kimoto as heading up product development and
5 publisher relations. (Pl.'s Ex. 572.)

6 Smith testified at his deposition that K. Kimoto recruited
7 him for employment at Vantex and negotiated the terms of Smith's
8 agreement with Vantex. (Smith Dep. at 37, 70-71, 74, 79-80, 136-
9 37.) Smith also identified K. Kimoto as someone who had
10 authority at Vantex to terminate his employment. (Id. at 87.) K.
11 Kimoto also had authority to grant or deny Jn Paul's requests for
12 time off. (Smith Dep. at 141-42.) K. Kimoto participated in
13 Vantex business affairs, such as a discussion regarding setting up
14 merchant accounts and the decision to split up Vertek and Vantex.
15 (Pl.'s Ex. 576; Smith Dep. at 154-56.) Vertek paid for thousands of
16 dollars worth of jury and trial consultation for K. Kimoto. (Pl.'s
17 Exs. 269-70, 272.)

18 The FTC also is likely to prevail in showing K. Kimoto had
19 actual knowledge of the misrepresentations, or at least was
20 recklessly indifferent. K. Kimoto was the originator of Grant
21 Connect, which no one has attempted to defend as a legitimate
22 product. Around the time K. Kimoto was setting up Vantex and
23 recruiting Smith to take over Vantex operations, K. Kimoto was
24 facing criminal charges in relation to the Assail matter. K. Kimoto
25 therefore should have been alert to the possibility that similar offers
26 made over the internet were false and/or misleading.

1 iv. The FTC is likely to prevail in demonstrating Defendant Jn Paul
2 participated directly in the acts and practices of Vertek and Vantex,
3 and/or had the authority to control the acts and practices of Vertek
4 and Vantex employees. Jn Paul worked at Vantex as operations
5 manager. (Pl.'s Ex. 586 at 34, 76, Ex. 587 at 23-24.) Dacko
6 described her as a "boss," the one "running the show," and his
7 "supervisor." (Pl.'s Ex. 586 at 54, 59.) K. Kimoto described Jn
8 Paul to Smith as his "right hand man," and stated she "knows the
9 operation inside out." (Smith Dep. at 48.) According to
10 McKinnon, Jn Paul had authority to decide whether a new vendor
11 would receive a new "skin," or offer. (Pl.'s Ex. 587 at 165-66.) Jn
12 Paul also was involved in regular meetings regarding the business
13 operations of the various offers. (Pl.'s Exs. 422, 433-34, 461,
14 486-87, 507-08.)

15 The FTC also is likely to prevail in showing Jn Paul had
16 actual knowledge of the misrepresentations, or at least was
17 recklessly indifferent. McKinnon testified that she advised another
18 Vantex employee that she had found a Vantex page that was not in
19 compliance because it showed President Obama and indicated the
20 public could obtain free stimulus money. (Pl.'s Ex. 587 at 74-76.)
21 That employee advised Jn Paul and Smith, but the page was not
22 taken down immediately. (Id.) McKinnon also related that she
23 advised Jn Paul some pages regarding the line of credit offers were
24 not compliant, but Jn Paul told her not to change those pages. (Pl.'s
25 Ex. 587 at 100-02.) Jn Paul was included on the above-referenced
26 email strings regarding M. Henriksen's question as to whether

1 refunds issued per cycle increased due to people “watching their
2 bills” or was based on giving partial refund policy to “solve the
3 chargeback issue.” (Pl.’s Ex. 536, 537.) In her letter to the FTC, Jn
4 Paul does not dispute she knew the offers were false or misleading.
5 She argues only that she tried to be “as compliant as possible,” and
6 she was just “following orders.” (Pl.’s Reply, Decl. of Roberto
7 Anguizola, Ex. 1.)

8 3. There is good cause to believe that immediate and irreparable harm will result
9 from Additional Individual Defendants’ ongoing violations of the FTC Act, the
10 EFTA, and Regulation E unless Additional Individual Defendants are restrained
11 and enjoined by Order of this Court. See United States v. Nutri-cology, Inc., 982
12 F.2d 394, 398 (9th Cir. 1992);

13 4. There is good cause to believe that immediate and irreparable damage to this
14 Court’s ability to grant effective final relief for consumers, including monetary
15 restitution, rescission or refunds, will occur from the sale, transfer, or other
16 disposition or concealment by Additional Individual Defendants of their assets or
17 records without an injunction;

18 5. Good cause exists for (a) the freezing of the Additional Individual
19 Defendants’ assets and (b) ancillary relief;

20 6. Weighing the equities and considering Plaintiff’s likelihood of ultimate
21 success on the merits, a preliminary injunction with an asset freeze and other
22 equitable relief is in the public interest;

23 7. Plaintiff FTC is an independent agency of the United States of America and
24 no security is required of any agency of the United States for the issuance of a
25 preliminary injunction. Fed. R. Civ. P. 65(c).

26 ///

ORDER

DEFINITIONS

For the purpose of this Preliminary Injunction (“Order”), the following definitions shall apply:

1. “Additional Defendants” means Consolidated Merchant Solutions, LLC; OS Marketing Group, LLC; Acai, Inc.; Allclear Communications, Inc.; Dragon Group, Inc.; Elite Benefits, Inc.; Global Fulfillment, Inc.; Global Gold Limited; Healthy Allure, Inc.; MSC Online, Inc.; Paid To Process, Inc.; Premier Plus Member, Inc.; Total Health, Inc.; Vcomm, Inc.; Juliette M. Kimoto Asset Protection Trust; Michael L. Henriksen, Jr.; Tasha Jn Paul; Kyle R. Kimoto; and Johnnie Smith;
2. “Additional Individual Defendants” means Michael Henriksen; Tasha Jn Paul; Kyle Kimoto; and Johnnie Smith.
3. “Asset” means any legal or equitable interest in, right to, or claim to, any real, personal, or intellectual property including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or other deliveries, shares or stock, securities, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), cash, trusts, including but not limited to asset protection trusts, and reserve funds or other accounts associated with any payments processed on behalf of any Defendant, including, but not limited to, such reserve funds held by a payment processor, credit card processor, or bank.
4. “Assisting others” includes knowingly providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, charging consumers for products or services, or receiving or responding to consumer complaints; (2) formulating or providing, or

1 arranging for the formulation or provision of, any promotional material; (3)
2 providing names of, or assisting in the generation of, potential customers; or (4)
3 performing promotional or marketing services of any kind, including but not
4 limited to, creating, hosting, or maintaining websites, or recruiting affiliates; or
5 (5) processing credit and debit card payments.

6 5. "Charge" means any amount charged or debited to a consumer's credit card,
7 debit card, checking, savings, share or similar financial account, or collected
8 from a consumer by any other method.

9 6. "Clearly and Conspicuously"

10 a. with regard to print advertisements, solicitations, or other promotional
11 material, the disclosure shall be in a type size and location sufficiently
12 noticeable for an ordinary consumer to read and comprehend it, in print
13 that contrasts with the background against which it appears; and in
14 multi-page promotional materials, the disclosure shall appear on the cover
15 or first page;

16 b. with regard to Internet advertisements, solicitations, or other
17 promotional material, the disclosure shall be made next to any advertised
18 price or cost (including free), and where consumers' financial account
19 information is required, without the use of pop-up windows or hyperlinks
20 to other electronic pages to display Material information.

21 7. "Continuity Program" means any plan, arrangement, or system under which a
22 consumer is periodically charged for products or services, including but not
23 limited to access to a "member only" website, without prior notification by the
24 seller before each charge, regardless of any trial or approval period allowing the
25 consumer to cancel the program.

26 8. "Corporate Defendants" means Grant Connect, LLC; Global Gold, Inc.;

1 Horizon Holdings, LLC; O'Connell Gray, LLC; Pink LP; Vantex Group, LLC;
2 Vertek Group, LLC; Consolidated Merchant Solutions, LLC; OS Marketing
3 Group, LLC; Acai, Inc.; AllClear Communications, Inc.; Dragon Group, Inc.;
4 Elite Benefits, Inc.; Global Fulfillment, Inc.; Global Gold Limited; Healthy
5 Allure, Inc.; MSC Online, Inc.; Paid To Process, Inc.; Premier Plus Member,
6 Inc.; Total Health, Inc.; VComm, Inc.; Juliette M. Kimoto Asset Protection Trust;
7 and their successors, assigns, affiliates or subsidiaries.

8 9. "Defendants" means Grant Connect, LLC; Global Gold, Inc.; Horizon
9 Holdings, LLC; O'Connell Gray, LLC; Pink LP; Vantex Group, LLC; Vertek
10 Group, LLC; Rachael A. Cook; James J. Gray; Steven R. Henriksen; Juliette M.
11 Kimoto; Randy D. O'Connell; Michael Henriksen; Tasha Jn Paul; Kyle Kimoto;
12 Johnnie Smith; Acai, Inc.; AllClear Communications, Inc.; Consolidated
13 Merchant Solutions, LLC; Dragon Group, Inc.; Elite Benefits, Inc.; Global
14 Fulfillment Inc.; Global Gold Limited; Healthy Allure, Inc.; Juliette M. Kimoto
15 Asset Protection Trust; MSC Online, Inc.; OS Marketing Group, LLC; Paid to
16 Process, Inc.; Premier Plus Member, Inc.; Total Health, Inc.; and Vcomm, Inc.

17 10. "Document" is synonymous in meaning and equal in scope to the usage of
18 the term in the Federal Rules of Civil Procedure 34(a), and includes writing,
19 drawings, graphs, charts, Internet sites, Web pages, Web sites, electronic
20 correspondence, including e-mail and instant messages, photographs, audio and
21 video recordings, contracts, accounting data, advertisements (including, but not
22 limited to, advertisements placed on the World Wide Web), FTP Logs, Server
23 Access Logs, USENET Newsgroup postings, World Wide Web pages, books,
24 written or printed records, handwritten notes, telephone logs, telephone scripts,
25 receipt books, ledgers, personal and business canceled checks and check
26 registers, bank statements, appointment books, computer records, and other data

1 compilations from which information can be obtained and translated, if
2 necessary, through detection devices into reasonably usable form. A draft or
3 non-identical copy is a separate document within the meaning of the term.

4 11. "Individual Defendants" means Rachael A. Cook; James J. Gray; Steven R.
5 Henriksen; Juliette M. Kimoto; Randy D. O'Connell; Michael L. Henriksen, Jr.;
6 Tasha Jn Paul; Kyle R. Kimoto; and Johnnie Smith.

7 12. "Las Vegas Preliminary Injunction" means the preliminary injunction entered
8 by the Court against Defendants Global Gold, Inc.; Pink LP; Vantex Group,
9 LLC; Verterk Group, LLC; Rachael A. Cook; Steven R. Henriksen; and Juliette
10 M. Kimoto on September 22, 2009 (Doc. #83).

11 13. "Material" means likely to affect a person's choice of, or conduct regarding,
12 goods or services;

13 14. "Negative Option feature" means, in an offer or agreement to sell or provide
14 any goods or services, a provision under which the customer's silence or failure
15 to take an affirmative action to reject goods or services or to cancel the agreement
16 is interpreted by the seller as acceptance of the offer;

17 15. "Original Corporate Defendants" means Grant Connect, LLC; Global Gold,
18 Inc.; Horizon Holdings, LLC; O'Connell Gray, LLC; Pink LP; Vantex Group,
19 LLC; Vertek Group, LLC; and their successors, assigns, affiliates or subsidiaries.

20 16. "Original Defendants" means Grant Connect, LLC; Horizon Holdings, LLC;
21 O'Connell Gray, LLC; Global Gold, Inc.; Vantex Group, LLC; Vertek Group,
22 LLC; Pink LP; Rachael A. Cook; James J. Gray; Steven R. Henriksen; Juliette M.
23 Kimoto; and Randy D. O'Connell.

24 17. "Person" means a natural person, organization, or other legal entity,
25 including a corporation, partnership, proprietorship, association, cooperative,
26 government or governmental subdivision or agency, or any other group or

1 combination acting as an entity;

2 18. "Plaintiff" or "Commission" or "FTC" means the Federal Trade
3 Commission;

4 19. "Preauthorized Electronic Fund Transfer," as defined by the Electronic Fund
5 Transfer Act, 15 U.S.C. § 1693a(9), means an electronic fund transfer authorized
6 in advance to recur at substantially regular intervals.

7 20. "Receiver" means the receiver appointed in Section XI of this Order and any
8 deputy receivers that shall be named by the temporary receiver.

9 21. "Receivership Defendants" means Grant Connect, LLC; Global Gold, Inc.;
10 Horizon Holdings, LLC; O'Connell Gray, LLC; Pink LP; Vantex Group, LLC; Vertek
11 Group, LLC; and their successors, assigns, affiliates or subsidiaries.

12 22. "Reno Preliminary Injunction" means the stipulated preliminary injunction
13 entered by the Court as to Defendants Grant Connect, LLC; Horizon Holdings,
14 LLC; O'Connell Gray, LLC; James J. Gray; and Randy D. O'Connell on August
15 18, 2009 (Doc. #48).

16 23. "Representatives" means Defendants' officers, agents, servants, employees,
17 and attorneys, and any other person or entity in active concert or participation
18 with them who receives actual notice of this Order by personal service or
19 otherwise.

20 **I.**

21 **PROHIBITED BUSINESS ACTIVITIES**

22 **IT IS THEREFORE ORDERED** that, in connection with the advertising,
23 marketing, promotion, offering for sale, or sale of any product or service, the Additional
24 Individual Defendants and their Representatives, whether acting directly or through any
25 entity, corporation, subsidiary, division, director, manager, member, affiliate, independent
26 contractor, accountant, financial advisor, or other device, **are hereby preliminarily**

1 **restrained and enjoined from:**

2 A. Misrepresenting, directly or indirectly, expressly or by implication, or from
3 assisting others who are misrepresenting, any consumer's eligibility to receive, or
4 the likelihood of receiving, a grant or other financial assistance from the
5 government or any other source;

6 B. Making any representation, expressly or by implication, concerning
7 Defendants' success rate in securing grants or any person's likelihood of
8 receiving a grant, unless Additional Individual Defendants possess and rely upon
9 reliable evidence that substantiates the representation at the time the
10 representation is made;

11 C. Failing to disclose, Clearly and Conspicuously, all applicable material terms
12 regarding any and all products and services sold, marketed, promoted, or
13 distributed by Defendants, including but not limited to:

14 1. all products and services that are part of the sales offer, including but
15 not limited to, all goods and services provided by third parties and/or
16 affiliates;

17 2. all Continuity Programs associated with the sales offer;

18 3. in conjunction with any Continuity Program:

19 a. that consumers are signing up for a Continuity Program;

20 b. the length of any trial period;

21 c. that consumers who do not take affirmative action to cancel the
22 Continuity Program within the trial period will incur a Charge by
23 Defendants;

24 d. the Charge(s) that Defendants impose on consumers who do not
25 cancel within the trial period, and the date(s) the Charge(s) will be
26 submitted for payment; and

- e. the specific steps consumers must follow to cancel enrollment in all Continuity Programs to avoid incurring any Charge;
4. any other Negative Option feature of any product or service that is part of the sales offer;
5. the amount of all Charges for all products and services that are part of the sales offer, including but not limited to, any Continuity Program, and goods and services provided by third parties; and
6. Defendants' refund policy.

D. Continuing to charge the credit card of any consumer for the purchase of Defendants' grant-related publications, products, goods, services, or programs;

E. Charging the credit or debit card, or debiting the bank account, of any consumer who was enrolled in any Continuity Program without receiving clear and conspicuous disclosures, as described in this Section, of the material terms of such program; and

F. Misrepresenting, directly or indirectly, expressly or by implication, or from knowingly assisting others who are misrepresenting, any other fact material to a consumer's decision to purchase Defendants' products or services.

II.

ACTIVITIES PROHIBITED PURSUANT TO THE ELECTRONIC FUNDS TRANSFER ACT ("EFTA")

IT IS FURTHER ORDERED that Additional Individual Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, **are hereby preliminarily restrained and enjoined from:**

A. Failing to obtain written authorization for preauthorized Electronic Fund Transfers from a consumer's account before initiating any Preauthorized Electronic Fund

1 Transfer, as required by Section 907(a) of EFTA, 15 U.S.C. § 1693e(a) and Section
 2 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b) as more fully set out in Section 205.10 of
 3 the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205,
 4 Supp. I; and

5 B. Failing to provide a copy of a valid written authorization to the consumer for
 6 preauthorized Electronic Fund Transfers from a consumer's account, as required by Section
 7 907(a) of EFTA, 15 U.S.C. § 1693e(a) and Section 205.10(b) of Regulation E, 12 C.F.R.
 8 § 205.10(b), as more fully set out in Section 205.10 of the Federal Reserve Board's Official
 9 Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I.

10 III.

11 ASSET FREEZE

12 **IT IS FURTHER ORDERED** that Additional Individual Defendants and their
 13 Representatives, whether acting directly or through any entity, corporation, subsidiary,
 14 division, director, manager, member, affiliate, independent contractor, accountant, financial
 15 advisor, or other device, **are hereby preliminarily restrained and enjoined from:**

16 A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling,
 17 concealing, dissipating, disbursing, assigning, relinquishing, spending, withdrawing,
 18 granting a lien or security interest in, or otherwise disposing of any funds, real or personal
 19 property, accounts, contracts, shares of stock, lists of consumer names, or other assets,
 20 wherever located, including outside the United States, that are:

- 21 1. owned or controlled, in whole or in part by any Defendant;
- 22 2. held for the benefit of, directly or indirectly, any Defendant, in whole
- 23 or in part;
- 24 3. in the actual or constructive possession of any Defendant;
- 25 4. held by an agent of any Defendant as a retainer for the agent's
- 26 provision of services to Defendants; or

1 5. owned or controlled by, or in the actual or constructive possession of or
2 otherwise held for the benefit of, any corporation, partnership, asset
3 protection trust, or other entity that is directly or indirectly owned,
4 managed, controlled by any of the Defendants, or of which any Defendant
5 is an Officer, Director, Member, or Manager. This includes, but is not
6 limited to, any assets held by, for, or subject to access by, any of the
7 Defendants at any bank or savings and loan institution, or with any
8 broker-dealer, escrow agent, title company, commodity trading company,
9 precious metal dealer, or other financial institution or depository of any
10 kind; or

11 6. held in any account for which any Defendant is an authorized signor.

12 7. This Order shall not preclude any Additional Individual Defendant
13 from spending a maximum of \$100 per day for living expenses from their
14 personal funds.

15 8. Additional Individual Defendants may seek relief from the asset freeze
16 in relation to specified assets for good cause shown.

17 B. Opening or causing to be opened, unless accompanied by Counsel for the
18 Commission, any safe deposit boxes titled in the name of any Defendant, either individually
19 or jointly, or subject to access by any Defendant;

20 C. Obtaining a personal or secured loan encumbering the assets of any
21 Defendant, or subject to access by any Defendant;

22 D. Incurring liens or other encumbrances on real property, personal property, or
23 other assets in the name, singly or jointly, of any Defendant or of any corporation,
24 partnership, or other entity directly or indirectly owned, managed, or controlled by any
25 Defendant; or

26 E. Incurring charges or cash advances on any credit or bank card issued in the

1 name, individually or jointly, of any Corporate Defendant or any corporation, partnership,
2 or other entity directly or indirectly owned, managed, or controlled by any Defendant or of
3 which any Defendant is an Officer, Director, Member, or Manager. This includes, but is
4 not limited to, any corporate bank or credit card account for which any Additional
5 Individual Defendant is an authorized signor.

6 **IT IS FURTHER ORDERED** that the assets affected by this Section shall
7 include assets (a) existing as of the date this Order is entered, or (b) acquired by any
8 Defendant following entry of this Order, if such assets are derived from any activity that is
9 the subject of or is prohibited by this Order.

10 **IV.**

11 **DUTIES OF ASSET HOLDERS**

12 **IT IS FURTHER ORDERED** that any financial or brokerage institution, credit
13 card processing company, payment processor, merchant bank, acquiring bank, business
14 entity, or person served with a copy of this Order that (a) holds, controls, or maintains
15 custody of any account or asset of any Additional Individual Defendant, (b) holds, controls,
16 or maintains custody of any asset associated with credit or debit card charges made on
17 behalf of Additional Individual Defendants, including but not limited to, reserve funds held
18 by payment processors, or (c) that has held, controlled, or maintained custody of any such
19 account or asset at any time since the date of entry of this Order shall:

20 A. Hold and retain within its control and prohibit the withdrawal, removal,
21 assignment, transfer, pledge, encumbrance, disbursement, dissipation, relinquishing,
22 conversion, sale, or other disposal of any such asset except by further order of this Court;

23 B. Deny any person, except the Receiver acting pursuant to Section XII of this
24 Order, access to any safe deposit box that is:

- 25 1. titled in the name of any Additional Individual Defendant, either
26 individually or jointly; or

1 2. otherwise subject to access by any Additional Individual Defendant;

2 C. Unless already provided, provide the FTC's counsel, within ten (10) business
3 days of receiving a copy of this Order, a sworn statement setting forth:

4 1. the identification number of each account or asset:

5 a) titled in the name, individually or jointly, of any of the
6 Additional Individual Defendants;

7 b) held on behalf of, or for the benefit of, any of Additional
8 Individual; or

9 c) associated with credit or debit card charges made on behalf of
10 Additional Individual Defendants;

11 2. the balance of each such account, or a description of the nature and
12 value of each such asset as of the close of business on the day on which
13 this Order is served, and, if the account or other asset has been closed or
14 removed, the date closed or removed, the total funds removed in order to
15 close the account, and the name of the person or entity to whom such
16 account or other asset was remitted; and

17 3. the identification of any safe deposit box that is either titled in the
18 name, individually or jointly, of any of the Additional Individual
19 Defendants, or is otherwise subject to access by any of the Additional
20 Individual Defendants; and

21 D. Upon the request of the FTC, promptly provide the FTC with copies of all
22 records or other documentation pertaining to such account or asset, including, but not
23 limited to, originals or copies of account applications, account statements, signature cards,
24 checks, drafts, deposit tickets, transfers to and from the accounts, including wire transfers
25 and wire transfer instructions, all other debit and credit instruments or slips, currency
26 transaction reports, 1099 forms, and safe deposit box logs.

V.

FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that each Additional Individual Defendant, unless already provided, shall upon of entry of this Order prepare and deliver to Counsel for the Commission and to the Receiver completed financial statements on the forms attached to this Order as Attachment A (Financial Statement of Individual Defendant) for themselves individually, and Attachment B (Financial Statement of Corporate Defendant) for each business entity under which they conduct business or of which they are an officer, and for each trust for which any Defendant is a trustee. The financial statements shall be accurate as of the date of entry of this Order. Each Additional Individual Defendant shall include in the financial statements a full accounting of all funds and assets, whether located inside or outside of the United States, that are: (a) titled in the name of such Additional Individual Defendant, jointly, severally, or individually; (b) held by any person or entity for the benefit of such Additional Individual Defendant; or (c) under the direct or indirect control of such Additional Individual Defendant.

VI.

REPATRIATION OF ASSETS AND DOCUMENTS

IT IS FURTHER ORDERED that upon entry of this Order, each Additional Individual Defendant shall:

A. Provide the Commission and the Receiver with a full accounting of all funds, documents, and assets outside of the United States which are: (1) titled in the name, individually or jointly, of any Defendant; or (2) held by any person or entity for the benefit of any Defendant; or (3) under the direct or indirect control, whether jointly or singly, of any Defendant;

B. Transfer to the territory of the United States and deliver to the Receiver all funds, documents, and assets located in foreign countries which are: (1) titled in the name

1 individually or jointly of any Additional Individual Defendant; or (2) held by any person or
2 entity, for the benefit of any Additional Individual Defendant; or (3) under the direct or
3 indirect control of any Additional Individual Defendant, whether jointly or singly;

4 C. Provide the Commission access to all records of accounts or assets of any
5 Additional Individual Defendant held by financial institutions located outside the territorial
6 United States by signing the Consent to Release of Financial Records appended to this
7 Order as Attachment C.

8 **VII.**

9 **NONINTERFERENCE WITH REPATRIATION**

10 **IT IS FURTHER ORDERED** that Additional Individual Defendants and their
11 Representatives, whether acting directly or through any entity, corporation, subsidiary,
12 division, director, manager, member, affiliate, independent contractor, accountant, financial
13 advisor, or other device, are hereby preliminarily restrained and enjoined from taking any
14 action, directly or indirectly, which may result in the encumbrance or dissipation of foreign
15 assets, or in the hindrance of the repatriation required by Section VI of this Order,
16 including, but not limited to:

17 A. Sending any statement, letter, fax, email or wire transmission, or telephoning
18 or engaging in any other act, directly or indirectly, that results in a determination by a
19 foreign trustee or other entity that a “duress” event has occurred under the terms of a
20 foreign trust agreement until such time that all assets have been fully repatriated pursuant to
21 Section VI of this Order; or

22 B. Notifying any trustee, protector or other agent of any foreign trust or other
23 related entities of either the existence of this Order, or of the fact that repatriation is
24 required pursuant to a court order, until such time that all assets have been fully repatriated
25 pursuant to Section VI of this Order.

26 ///

VIII.

CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency served with this Order shall promptly furnish consumer reports as requested concerning any Additional Individual Defendant to the counsel for the Commission.

IX.

PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Additional Individual Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are hereby preliminarily restrained and enjoined from:

A. destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, documents that relate to the business, business practices, assets, or business or personal finances of any Defendant; and

B. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect Additional Individual Defendants' incomes, disbursements, transactions, and use of money.

X.

**PROHIBITION ON RELEASE OF CUSTOMER INFORMATION
OR CUSTOMER LISTS**

IT IS FURTHER ORDERED that the Additional Individual Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are hereby preliminarily restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number,

1 credit card number, bank account number, email address, or other identifying information of
2 any person who paid money to any Defendant for grant-related services, programs, or
3 products or who were contacted or are on a list to be contacted by any of the Defendants;
4 provided that the Additional Individual Defendants may disclose such identifying
5 information to a law enforcement agency or as required by any law, regulation, or court
6 order.

7 **XI.**

8 **TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER**

9 **IT IS FURTHER ORDERED** that the Additional Individual Defendants, their
10 Representatives, and any other person, with possession, custody or control of property of, or
11 records relating to, the Receivership Defendants shall upon notice of this Order by personal
12 service or otherwise immediately notify the Receiver of, and, upon receiving a request from
13 the Receiver, immediately transfer or deliver to the Receiver possession, custody, and
14 control of, the following:

15 A. All assets of the Receivership Defendants;

16 B. All documents of the Receivership Defendants, including, but not limited to,
17 books and records of accounts, all financial and accounting records, balance sheets, income
18 statements, bank records (including monthly statements, canceled checks, records of wire
19 transfers, and check registers), client lists, title documents and other papers;

20 C. All computers and data in whatever form used to conduct the business of the
21 Receivership Defendants;

22 D. All assets belonging to other persons or entities whose interests are now
23 under the direction, possession, custody, or control of, the Receivership Defendants; and

24 E. All keys, codes, and passwords necessary to gain or to secure access to any
25 assets or documents of the Receivership Defendants, including, but not limited to, access to
26 their business premises, means of communication, accounts, computer systems,

1 or other property. In the event that any person or entity fails to deliver or transfer any asset
2 or otherwise fails to comply with any provision of this Section, the Receiver may file ex
3 parte an Affidavit of Non-Compliance regarding the failure. Upon filing of the affidavit,
4 the Court may authorize, without additional process or demand, Writs of Possession or
5 Sequestration or other equitable writs requested by the Receiver. The writs shall authorize
6 and direct the United States Marshal or any sheriff or deputy sheriff of any county, or any
7 other federal or state law enforcement officer, to seize the asset, document, or other item
8 covered by this Section and to deliver it to the Receiver.

9 **XII.**

10 **PROVISION OF INFORMATION TO RECEIVER**

11 **IT IS FURTHER ORDERED** that Additional Individual Defendants shall
12 provide to the Receiver, immediately upon request, the following:

13 A. A list of all assets and property, including accounts, of the Receivership
14 Defendants that are held in any name other than the name of a Receivership Defendant, or
15 by any person or entity other than a Receivership Defendant; and

16 B. A list of all agents, employees, officers, servants or those persons in active
17 concert and participation with the Additional Individual Defendants and Receivership
18 Defendants, who have been associated or done business with the Receivership Defendants.

19 **XIII.**

20 **COOPERATION WITH THE RECEIVER**

21 **IT IS FURTHER ORDERED** that Additional Individual Defendants, their
22 Representatives, and any other person served with a copy of this Order shall fully cooperate
23 with and assist the Receiver in taking and maintaining possession, custody, or control of the
24 assets of the Receivership Defendants. This cooperation and assistance shall include, but
25 not be limited to: providing information to the Receiver that the Receiver deems necessary
26 in order to exercise the authority and discharge the responsibilities of the Receiver under

1 this Order; providing any password required to access any computer, electronic file, or
2 telephonic data in any medium; advising all persons who owe money to the Receivership
3 Defendants that all debts should be paid directly to the Receiver; and transferring funds at
4 the Receiver's direction and producing records related to the assets and sales of the
5 Receivership Defendants. The entities obligated to cooperate with the Receiver under this
6 provision include, but are not limited to, banks, broker-dealers, savings and loans, escrow
7 agents, title companies, commodity trading companies, precious metals dealers and other
8 financial institutions and depositories of any kind, and all common carriers, third-party
9 billing agents, including but not limited to, payment processors, and other
10 telecommunications companies, that have transacted business with the Receivership
11 Defendants.

12 **XIV.**

13 **INTERFERENCE WITH THE RECEIVER**

14 **IT IS FURTHER ORDERED** that Additional Individual Defendants and their
15 Representatives, corporations, subsidiaries, divisions, or affiliates, are hereby restrained and
16 enjoined from directly or indirectly:

17 A. Interfering with the Receiver managing, or taking custody, control, or
18 possession of, the assets or documents subject to this Receivership;

19 B. Transacting any of the business of the Receivership Defendants;

20 C. Transferring, receiving, altering, selling, encumbering, pledging, assigning,
21 liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or
22 custody of, or in which an interest is held or claimed by, the Receivership Defendants, or
23 the Receiver; and

24 D. Refusing to cooperate with the Receiver or the Receiver's duly authorized
25 agents in the exercise of their duties or authority under any order of this Court.

26 ///

XV.

STAY OF ACTIONS AGAINST LAS VEGAS RECEIVERSHIP DEFENDANTS

IT IS FURTHER ORDERED that, except by leave of this Court, during pendency of the Receivership ordered herein, the Additional Individual Defendants, their Representatives, corporations, subsidiaries, divisions, or affiliates, and all investors, creditors, stockholders, lessors, customers and other persons seeking to establish or enforce any claim, right, or interest against or on behalf of the Additional Individual Defendants, and all others acting for or on behalf of such persons, are hereby enjoined from taking action that would interfere with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants, including, but not limited to:

A. Commencing, prosecuting, or continuing a judicial, administrative, or other action or proceeding against the Receivership Defendants, including the issuance or employment of process against the Receivership Defendants, except that such actions may be commenced if necessary to toll any applicable statute of limitations;

B. Filing or enforcing any lien on any asset of the Receivership Defendants, taking or attempting to take possession, custody, or control of any asset of the Receivership Defendants; or attempting to foreclose, forfeit, alter, or terminate any interest in any asset of the Receivership Defendants, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise;

C. Initiating any other process or proceeding that would interfere with the Receiver managing or taking custody, control, or possession of, the assets or documents subject to this receivership.

Provided that, this Order does not stay: (i) the commencement or continuation of a criminal action or proceeding; (ii) the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; or (iii) the enforcement of a judgment, other than a money judgment, obtained in an action or

1 proceeding by a governmental unit to enforce such governmental unit's police or regulatory
2 power.

3 **XVI.**

4 **DISTRIBUTION OF ORDER BY DEFENDANTS**

5 **IT IS FURTHER ORDERED** that Additional Individual Defendants shall
6 immediately provide a copy of this Order to each affiliate, sales entity, successor, assign,
7 member, officer, director, employee, agent, independent contractor, client company,
8 servant, attorney, spouse, subsidiary, division, and representative of any Additional
9 Individual Defendant, and shall, within ten (10) days from the date of entry of this
10 Order, provide the FTC with a sworn statement that Additional Individual Defendants have
11 complied with this provision of the Order, which statement shall include the names and
12 addresses of each such person or entity who received a copy of this Order. Furthermore,
13 Additional Individual Defendants shall not take any action that would encourage officers,
14 agents, members, directors, employees, salespersons, independent contractors, attorneys,
15 subsidiaries, affiliates, successors, assigns or other persons or entities in active concert or
16 participation with them to disregard this Order or believe that they are not bound by its
17 provisions.

18 **XVII.**

19 **SERVICE ON FINANCIAL INSTITUTIONS,**
20 **ENTITIES OR PERSONS**

21 **IT IS FURTHER ORDERED** that copies of this Order may be served by any
22 means, including facsimile transmission, email, and overnight delivery service, upon any
23 financial institution or other entity or person that may have possession, custody, or control
24 of any documents or assets of any Additional Individual Defendant, or that may otherwise
25 be subject to any provision of this Order. Service upon any branch or office of any
26 financial institution shall effect service upon the entire financial institution.

XVIII.

GENERAL SERVICE OF ORDER

IT IS FURTHER ORDERED that pursuant to Fed. R. Civ. P. 4(c)(2), this Order and the papers filed in this matter may be served on the Additional Individual Defendants, upon the business premises of Additional Individual Defendants, and upon any financial institution or other entity or person that may have possession, custody or control of any documents or assets of any Additional Individual Defendant, or that may be subject to any provision of this Order, by employees of the FTC, by employees of any other law enforcement agency, by any agent of Plaintiff or by any agent of any process service retained by Plaintiff.

XXIX.

CORRESPONDENCE

IT IS FURTHER ORDERED that, for the purpose of this Order, all correspondence and service of pleadings on Plaintiff shall be addressed to:

Roberto Anguizola and Tracey Thomas
Federal Trade Commission
600 Pennsylvania Avenue NW, #286
Washington, DC 20580
FAX: 202-326-3395
Email: ranguizola@ftc.gov, tthomas@ftc.gov

XX.

DURATION OF THE PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED that this Order shall remain in full force and effect pending trial on the merits unless sooner modified or dissolved.

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1 **XXI.**

2 **RETENTION OF JURISDICTION**

3 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this
4 matter for all purposes.

5 **IT IS SO ORDERED.**

6
7 DATED: June 17, 2010

8 
9 PHILIP M. PRO
United States District Judge